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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,586	04/01/2004	Chris W. Cicenas	09086.0037-00	5862
22852	7590	04/19/2006	EXAMINER	
		FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413	WUJCIAK, ALFRED J	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/814,586	CICENAS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alfred Joseph Wujciak III	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 February 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 80-104 is/are pending in the application.
- 4a) Of the above claim(s) 1-79 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 80-96 and 98-104 is/are rejected.
- 7) Claim(s) 97 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/04 & 8/05.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

This is the first Office action for the serial number 10/814,586, METHODS AND APPARATUSES FOR ASSEMBLING RAILINGS, filed on 4/1/04.

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-18 and 66-72, drawn to bracket, classified in class 248, subclass 219.1.
- II. Claims 19-30, 65 and 73-79 drawn to deck, classified in class 52, subclass 234.
- III. Claims 31-38, drawn to tool, classified in class 29, subclass 700.
- IV. Claims 39-59, drawn to method, classified in class 256, subclass 59.
- V. Claims 60-64, drawn to railing, classified in class 256, subclass 59.
- VI. Claims 80-104, drawn to railing assembly, classified in class 256, subclass 59.

Applicant's election with traverse of groups I and II in the reply filed on 2/3/06 is acknowledged. The traversal is on the ground(s) that groups I, II and VI should be examined together. This is not found persuasive because group I is direct to bracket while group II is in combination of deck and bracket. Group VI does not contain deck but has support for rail, post and bracket in combination, which is different from group I.

The requirement is still deemed proper and is therefore made FINAL.

***Specification***

The disclosure is objected to because of the following informalities: On page 21 of the specification, line 7, “the angle of second surface 140” should be changed to ---the angle of second surface 130--- for clarification.

Appropriate correction is required.

### ***Claim Objections***

Claims 81-83 are objected to because of the following informalities:

Claims 81 and 83, lines 1 and 3 and claim 82, line 2, “configuration the rail” is indefinite and it should be changed to  
---configuration of the rail--- for clarification.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 83 and 95 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 83, lines 4-5, “the rail is not in the substantially horizontal orientation” is indefinite because the drawing shows that the rail is in horizontal configuration to the post.. Appropriate correction is required.

Claim 95, lines 2-3, “another rail cannot be mounted to the post via the bracket in the second configuration” is indefinite because the drawing and specification show that the second

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configuration is part of the bracket where the first configuration is located therein, they together support the rail on the post. "Another rail" is confusing because the bracket is capable of supporting one end of the rail at one time.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

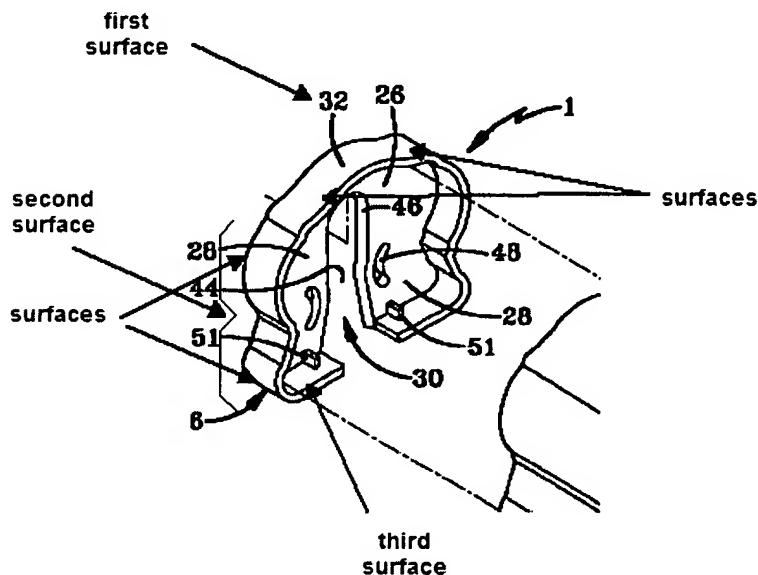
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 80-96, 99 and 104 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # 5,788,224 to Platt.

Patt teaches a rail assembly comprising a rail (2), a post (3) and a bracket (1) for mounting the rail to the post. The bracket comprises a post surface (28) at least a portion of which is configured to abut a mounting surface of the post, at least two surfaces (32 and on the side adjacent to element 32) configured to be associated with and not parallel to the post surface of the bracket. A first surface (32) of the at least two surfaces is configured to accommodate the rail mounted to the post in a first configuration and a second surface (on the side adjacent to element 32) of the at least two surfaces is configured to accommodate the rail mounted to the post in a second configuration different from the first configuration. The first configuration of the rail is configured to be mounted to the post at a first angle relative to the mounting surface of the post and in the second configuration of the rail is configured to be mounted at a second angle relative to the mounting surface of the post different from the first angle. Both of the first

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configuration and the second configuration of the rail is configured to be in a substantially horizontal orientation. The first surface comprises at least two first surfaces (two surfaces are inclined from the top of element 32). The second surface comprises at least two second surfaces. The assembly further comprises the third surface (located on the bottom of the bracket) configured to be associated with the post surface. See drawing of figure 2 from Platt's invention shown below for clarification:



#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 98 and 100-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt.

Platt teaches the first surface and second surface but fails to teach the first surface forms about a 45 degrees angle with the post surface and second surface forms about a 45 degrees angle with the post surface and first surface. Furthermore, Platt teaches the third surface but fails to teach the third surface forms about a 45 degrees angle with both the first and second surfaces. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified the angle of first surface, second surface and third surface to 45 degree to provide designer's preference for improving of the railing assembly.

#### ***Allowable Subject Matter***

Claim 97 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art fails to teach wherein the first surface includes at least one protrusion configured to assist the first surface in receiving and retaining the first surface of another bracket.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent # 6,648,304 to Zhu

US Patent # 4,114,861 to Long

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US Patent # 6,698,726 to Platt

US Patent # 5,961,242 to Leone

US Patent # 5,938,184 to DeSouza

US Patent # 6,053,481 to Scheide

US Patent # 6,543,751 to Spruill

US Patent # 6,601,831 to Erwin

US Patent # 6,805,335 to Williams

US Patent # 5,702,090 to Edgeman

US Patent # 5,547,169 to Russell

Zhu, Long, Platt, Leone, DeSourza, Scheide, Spruill, Erwin, Williams, Russell and Edgeman teach bracket for supporting rail on the post.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

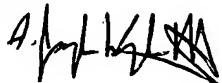
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III

Primary Examiner

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4/12/06